

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOHN WHITSON,

Petitioner,

v.

NATHANIEL QUARTERMAN,

Respondent.

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CIVIL ACTION No. H-06-0485

MEMORANDUM OPINION AND ORDER

Petitioner John Whitson, a state inmate proceeding *pro se* and *in forma pauperis*, filed this habeas action under 28 U.S.C. § 2254 challenging his disciplinary conviction. On April 11, 2006, the Court ordered respondent to answer. (Docket Entry No. 7.) In the order, the Court advised petitioner as follows:

The petitioner is ORDERED to file a response to any dispositive motion filed by the respondent, within thirty (30) days. The petitioner's failure to file a response within thirty days shall result in dismissal of this action for want of prosecution under Rule 41(b), Fed. R. Civ. P.

(*Id.*, p. 2, original emphasis.)

On June 20, 2006, respondent filed a motion for summary judgment raising failure to exhaust and lack of a protected liberty interest. (Docket Entry No. 11.) The certificate of service reflects that petitioner was served with a copy of the motion on June 20, 2006. (*Id.*, p. 17.) On July 14, 2006, the Court granted petitioner's request for additional time to respond, and ordered him to file a response by August 18, 2006. To-date, and despite

expiration of a reasonable period of time, petitioner has not responded to the motion for summary judgment.

The Court finds that petitioner has failed to comply with the Court's order to respond. The Court further finds that petitioner's failure to respond to the motion for summary judgment reflects his lack of due diligence in prosecuting his case. *See Martinez v. Johnson*, 104 F.3d 769 (5th Cir. 1997) (affirming dismissal of habeas petition for want of prosecution based on inmate's failure to respond to a summary judgment motion as ordered by the district court).

Accordingly, this case is **DISMISSED WITHOUT PREJUDICE** for want of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. A certificate of appealability is **DENIED**. Any and all pending motions are **DENIED AS MOOT**.

The Clerk will provide a copy of this order to the parties.

Signed at Houston, Texas, on August 31, 2006.

A handwritten signature in black ink, appearing to read 'G. Miller', is written over a horizontal line.

Gray H. Miller
United States District Judge